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Record No. 7387

In the
Supreme Court of Appeals of Virginia
at Richmond

CITY OF SUFFOLK

v.

COUNTY OF NANSEMOND

FROM THE CIRCUIT COURT OF NANSEMOND COUNTY

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

NOTICE TO COUNSEL

This case probably will be called at the session of court
to be held

APR 1971

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7387

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 12th day of January, 1970.

CITY OF SUFFOLK,

Plaintiff in error,

against

COUNTY OF NANSEMOND,

Defendant in error.

From the Circuit Court of Nansemond County
Harold H. Purcell, George F. Whitley, Jr., and
S. Bernard Coleman, Judges

Upon the petition of City of Suffolk, a municipal corporation, a writ of error is awarded it to an order entered by the Circuit Court of Nansemond County on the 24th day of July, 1969, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and the County of Nansemond was defendant; no bond being required.

RECORD

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**PETITION FOR ANNEXATION OF PORTIONS OF
THE COUNTY OF NANSEMOND TO THE
CITY OF SUFFOLK**

To: The Honorable Judges of the Circuit
Court of the County of Nansemond:

The petitioner, City of Suffolk, respectfully represents:

1. That on the twentieth day of June, 1968, the Council of the City of Suffolk adopted an ordinance, wherein the Council declared that the City of Suffolk desires to annex, pursuant to the provisions of Article 1, Chapter 25 of Title 15.1 of the Code of Virginia, as amended, certain territory in the County of Nansemond which is adjacent to the City of Suffolk.

2. That a copy of the aforesaid ordinance duly certified by the City Clerk of the City of Suffolk is filed with and prayed to be read as a part of this petition as if set out in full and at length herein.

3. That the necessity for and the expediency of annexing a portion of the territory of the said County to
page 2 } the City of Suffolk, the metes, bounds and area
of the territory, and the terms and conditions upon which annexation of the territory of the said County is sought and provisions planned for the future management and improvement thereof, are set forth in the ordinance, to which specific reference is hereby made.

4. That information indicating generally subdivisions, industrial areas, farm areas, vacant areas and other areas, together with possible future uses, in the said County and territory is shown on maps attached to and made a part of the ordinance, to which specific reference is hereby made.

WHEREFORE, the City of Suffolk prays that all proceedings required by Article 1, Chapter 25 of Title 15.1 of the Code of Virginia, as amended, be had, and that such territory in the County of Nansemond be annexed to the City of

Suffolk in accordance with the said provisions of the Code of Virginia.

City of Suffolk

By James C. Causey, Jr.
City Manager of Suffolk

* * * * *

Filed in the Clerk's Office the 26th day of June, 1968.

John H. Powell, Clerk.

* * * * *

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AN ORDINANCE

To provide for the extension of the corporate limits of the City of Suffolk, Virginia, pursuant to the provisions of Article 1, Chapter 25, Title 15.1 of the Code of Virginia, by the annexation of certain territory in the County of Nansemond; to declare the policy with respect thereto; to set forth the necessity and expediency thereof; to define the metes and bounds and area of the territory sought to be annexed; to show on maps annexed to this ordinance information concerning generally existing sub-divisions, industrial areas, farm areas, vacant areas and other land use; and information as to possible future uses of property in the territory sought to be annexed; to set forth the effects thereof on the County and its ability to support adequately the County government and public schools; and to prescribe the general terms and conditions upon which annexation is sought and provisions planned for future management and improvement of the annexed territory.

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THE CITY OF SUFFOLK
HEREBY ORDAINS:

DECLARATION OF POLICY TO ANNEX

§1. The Council of the City of Suffolk, a Municipal Corporation of the Commonwealth of Virginia, hereby declares that the City of Suffolk desires to annex certain territory in the County of Nansemond adjacent to the corporate limits of the City, in order to preserve and promote the general welfare of the metropolitan area, of which the City of Suffolk

and the said County of Nansemond are a part, and the safety of the inhabitants thereof, pursuant to the provisions of Article I, Chapter 25, Title 15.1 of the Code of Virginia.

NECESSITY AND EXPEDIENCY OF ANNEXATION

§2. That the Council hereby declares that it is both necessary and expedient to annex such territory for the following reasons:

I.

Population and Area

Nansemond County was formed in 1642 and according to the U. S. Census in 1960, had a land area of 427.70 square miles and a population of 31,366 in 1960.

The City of Suffolk was incorporated as a town in 1742; it was incorporated as a City in 1910; and its present charter was granted by an Act of the General Assembly, dated February 25, 1922. The City, at this time, has a land area of 2.33 square miles, and its population, according to the U. S. Census in 1960, was 12,609.

II.

page 5 } Necessary for Expansion

Suffolk is bounded on the north, east, south, and west by Nansemond County. The boundaries have constituted barriers to the orderly growth of the City.

The City's boundaries, resulting from previous annexation, are as follows:

Town in 1906	1.31 sq. miles
City in 1910, same as 1906	1.31 sq. miles
1916 Annexation	0.88 sq. miles
1926 Annexation	0.08 sq. miles
1928 Annexation	0.06 sq. miles
Total Area	2.33 sq. miles

There now exists no appreciable unoccupied space within the corporate limits of Suffolk for residential, commercial, or industrial development. Land for such use within the City is approximately 98% occupied.

U. S. Census figures show the growth of Suffolk's population to be as follows:

1930	10,271
1940	11,347
1950	12,339
1960	12,609
1967 Estimate as of July 1, 1967 by the Bureau of Population and Economic Research, Uni- versity of Virginia	12,175

This gives the City a population density of 5,225 per square mile or approximately 8.17 per acre.

Today 36% of the total City employees are living outside the corporate limits of the City, by special permission, due to the lack of building room within the City. This same condition exists in the commercial business, industrial, and manufacturing establishments which are located within the City.

The City's commercial and retail business is expanding within the City and must continue to expand in order to maintain property within the City. However, as such business expands, additional land is required, and each such expansion reduces the resident area of the City. Such reduction of the resident area requires the inhabitants to move their residence outside the City. This trend has steadily increased during the past ten years. This is clearly demonstrated when comparing the 1960 census with a total population of 12,609 against the 1967 estimates of the Bureau of Population and Economic Research of the University of Virginia with a total population of 12,175. This is a reduction of the City population of 3.44% in five years.

The concentration of population within the City, the lack of space within its boundaries for residential and industrial development, and the advantages of transportation and communication facilities, have combined to contribute to the settlement of people, and industrial and commercial enterprises, in more spacious and less crowded sites outside of the City in the territory sought to be annexed.

Suffolk must expand into the County or eventually decline through its inability to provide facilities and services for the population in the metropolitan area surrounding Suffolk and for the industries essential to the economic life of the entire community. The demand upon the City for municipal facilities and services increases with the population and industrial growth of the areas surrounding the City. Continued growth in population will occur in the County. The location and re-
location of industry in the metropolitan areas sur-
rounding the City will depend upon the facilities
and services provided in those areas ideally suited
for industrial development. Unless urban and urbanizing

areas surrounding the City are properly planned and coordinated for residential, industrial, and commercial use and provision is made for facilities and services required for such use, not only Suffolk, but the entire County area, will decline and thus result in economic stagnation of the entire Suffolk community.

III.

Community of Interest

People living within the boundaries of the City of Suffolk and those portions of Nansemond County which are sought to be annexed are together largely a single, homogeneous, populated urban and urbanizing community, of which Suffolk is the vital source and center, and without which much of the urbanized communities in the County would not have developed and could not exist as they are without the City.

A large proportion of the people living in the areas sought for annexation are entirely dependent for their livelihood upon employment in the industries, business, commercial establishments, and professions, conducted in the City.

Suffolk is the retail center and the principal wholesale distribution point for the people in the area sought for annexation, and is the principal source of supply for merchandise and articles for a large portion of the entire County. People living in the area sought for annexation, as well as a large portion of Nansemond County, are dependent upon the retail and wholesale outlets of Suffolk for the necessities of life.

Postal, telephone and telegraph facilities for the City and for the area sought for annexation are centered in page 8 } the City.

Railroad, bus, and motor carrier freight terminals for the entire area are centered in the City. The City is served by the Norfolk and Western Railroad, the Norfolk, Franklin and Danville Railroad, the Seaboard Coast Line Railway Company (formerly the S.A.L. and A.C.L. Railroads), the Greyhound Bus Line, the Trailway Bus Line, and 35 interstate motor freight lines. Suffolk has water access to Hampton Roads via a 12 foot maintained Nansemond River Channel.

The private clinics, doctors, and dentists which serve the area sought for annexation are centered in Suffolk. The Louise Obici Memorial Hospital of 200 beds is located just north of the City Corporate Line on Highway Route U. S. 460. City services and facilities which the hospital does not enjoy would be of considerable value to the hospital administration.

There are numerous churches and religious, civic, and fraternal organizations in the area, the great majority of which are located or centered in Suffolk. Many people living in the area sought for annexation are affiliated with these organizations and participate in their activities regardless of political boundaries or the divisions based on residences.

The only Public Library in the entire area is located in and owned by the City.

The principal public recreation facilities in the area are owned by and located within the City. They consist of the Birdsong Recreation Center, a building of approximately 21,100 square feet of floor space with adequate rooms for club and social activities and with adequate room and facilities for all types of indoor sports, including basketball and dancing; Peanut Park, a football and baseball facility and baseball facility with a seating capacity of 3,000; two parks equipped for softball league use, one park equipped with a cinder track for track meets, javelin, weight throwing, and other similar sports; and five combination parks and playgrounds for all age children; and two high school areas, one equipped for tennis and one for softball. The people of the area sought to be annexed participate freely in the use of the City's recreation facilities.

Nansemond County has no such recreation facilities or a professional recreation director and staff.

The City owns and operates two cemeteries, one within the City and one in the area sought for annexation. Nansemond County has no public owned cemetery. A large percentage of deceased persons of the area sought to be annexed are interred in the City's cemeteries in order to have an assured place for final repose.

The City provides at the expense of its taxpayers all essential municipal services and performs all necessary functions required to promote and preserve public safety, health and welfare in connection with the operation and maintenance of: the industrial, business, commercial and professional establishments, on which people in the area sought for annexation and other parts of the County depend for their livelihood; the wholesale and retail establishments on which such people depend for the necessities of life; the banks and financial institutions and the postal, telephone, telegraph and transportation facilities which serve them; the medical clinics and doctors' offices on which they are wholly dependent; many of the churches and other religious, civic and fraternal organizations with which they affiliate and in whose activities they participate; the library they use; page 10 } the recreational, cultural, and educational facili-

ties they enjoy; and the cemeteries in which many inter their dead.

The Plaza Shopping Center located north of Suffolk; the Be-Lo and Colonial Store Super Markets located east of Suffolk; the Hobbs Engineering Company, located west of Suffolk; together with some 50 private residences adjoining Suffolk are connected to the City sewer system and the cost of such sewers were borne by the owners and not the County. The owners pay the City a nominal sewage treatment fee. The owners and the people in the area which these facilities serve make no substantial contribution to the cost of providing the municipal services and the management and administration functions necessary to make such facilities available for their well-being comfort, safety, health, enjoyment and welfare.

IV.

County and City Government

The territory sought to be annexed in the County subsists under a form of government designed chiefly to meet the needs of a scattered rural population. Such government is wholly inadequate to meet even the minimum needs of the community as it becomes urbanized, as is the case of the territory sought for annexation.

The City has had a modern form of government since 1919. It has a City Manager who operates under the direction of a council of five members elected for four-year terms, the elections being staggered so that three councilmen are elected at the end of two years and two at the end of the next two years. The City's charter, revised and updated and adopted by the General Assembly in 1922 is fully adequate for its needs and to meet the needs of the territory sought page 11 } for annexation. Its functions of government and its administrative and managerial agencies can be readily extended to meet the needs of the territory sought to be annexed, to provide the facilities, improvements and services essential for an urban and urbanizing community, and to coordinate and plan the development of rural undeveloped and agricultural lands in the County for inevitable residential and industrial use.

Suffolk's tax and fiscal policies must be coordinated with the needs for performing its functions of government and providing essential facilities, services and public improvements. Its operating budgets and capital improvement budgets are kept separate and apart from each other. Its operating budgets are based upon performance of defined work programs providing services and facilities. Its operating

budgets must be balanced against anticipated revenues and its expenditures cannot exceed appropriations for the governmental services. Capital public improvements are financed through its capital budgets. No expenditures can be made for any other purpose nor exceed appropriations made for specific improvements. Bonds issued by the City to finance such improvements are well within the limitations imposed upon such indebtedness by the Constitution. The City is able to market its bonds at attractive rates of interest and generally considerably below those required to be paid by the County. The City has the power, ability and resources to execute the policy of the Commonwealth by absorbing the urban areas in the County and those which can be developed for residential and industrial uses within its municipal government.

The consolidation of the territory sought to be annexed with the City, and the coordination and integration of its resources with those of the City will enable the metropolitan area to function as a unit under a form of government designed to meet the needs of a growing industrial and residential center.

V.

Services, Facilities and Improvements

The territory sought for annexation needs to be incorporated in and coordinated and integrated with programs of governmental services, facilities and improvements to promote the general welfare of the area and the safety, health, peace, good order, comfort and convenience of the inhabitants of the area. Unless the territory sought to be annexed and the inhabitants thereof are brought under a single municipal government, the coordination and integration of such services, facilities and improvements are not economically or politically feasible. Attempts to provide such services, facilities and improvements for the territory sought to be annexed by separate units of government would involve ineffective and wasteful duplication of resources and effort. Suffolk and the territory sought to be annexed can meet the practical needs and requirements of the metropolitan area only by consolidation through annexation.

Water: The City of Suffolk has contractual agreements with the City of Portsmouth for an adequate and safe water supply for the present City and any future enlargements of the City's corporate limits. The City of Portsmouth, through near the City of Suffolk. Its water treatment, facilities, and its Water Department, has an excellent source of raw water supply consisting of four impounded reservoirs adjoining and

main pumping facilities for the entire system are located within the corporate limits of Suffolk. The entire page 13 } water system from its inception has been designed to furnish adequate water to the Cities of Portsmouth, Suffolk, and surrounding areas. Water rates for domestic and industrial use in Suffolk are the same as in Portsmouth. The rates compare favorably with any city in Virginia.

The area sought for annexation has no overall planned distribution system to supply domestic or industrial water to its inhabitants. Some of the area is served by the City of Portsmouth at double the City of Suffolk—Portsmouth rates. Other areas are served by small independently owned systems depending on well water with no treatment facilities. A large part of the area is dependent upon the owner furnishing its own supply.

The City of Suffolk through its contract with the City of Portsmouth is in a position to furnish an adequate and planned distribution system and supply of water for the entire area sought for annexation.

Sanitary Sewage Disposal: Suffolk owns, maintains, and operates a modern and complete system for the disposal of sewage. This system serves for all practical purposes every part of the City requiring sanitary sewage disposal service. The Sewage Disposal Plant provides primary and secondary treatment as required by the State Water Control Board. The plant, as it now exists, has a design capacity for treating 2,000,000 gallons of raw sewage per day (24 hours). It is presently operating at 65% of its capacity. The plant site is of sufficient size and the plant is so designed that by adding an additional digester, rotary filter, primary and final clarifiers, its capacity could be increased not less than 90%. Nansemond County has no planned sewer system or page 14 } facilities for treating sewage. The area sought for annexation, with the exception of the Obici Memorial Hospital complex, is dependent upon *septic* tanks and pit privies. It is important to the health and welfare of the people of this area that a sewer collection system and sewage treatment facilities be extended into these areas as extensions of such a system are justified.

Garbage and Trash Collection: Suffolk operates and maintains coordinated and integrated facilities for the collection and disposal of garbage and trash throughout the City, consisting of adequate equipment, personnel, and a disposal area (using the sanitary landfill method) for protecting the health of the community. Garbage and trash are collected at frequent, closely spaced intervals in accordance with planned

regular schedules from all private homes and retail business establishments within the City. No separate charge is made for such service; the operation is financed from the General Fund of the City. Manufacturers and industrial establishments use private collectors who dispose of the trash collected at the City disposal areas without charge for use of the City facility. Suffolk would extend the same service now rendered to its citizens to the territory sought for annexation. The County collects trash in some portions of the territory sought for annexation and in such trash collection districts, the land owners pay a special tax for this service, any trash or garbage collected in the remainder of the territory is by the individual or by private contract collectors.

Fire Fighting: Suffolk owns and maintains coordinated and integrated facilities for fire fighting, consisting of two engine houses located strategically within the City so as to reach the scene of fires quickly with modern fire equipment and trained full time employed personnel. With such an organization, Suffolk is able to respond to fire alarms and combat its effects quickly and efficiently in any part of the City. There is no part of the City that is without an adequate water supply for fire fighting purposes. Fire fighting in Nansemond County is provided by a small fourteen-man paid fire department and by various private volunteer fire fighting organizations, most of the personnel serve part time and without compensation. The fourteen-man paid fire department operates from two stations. One is located and adjoins the east corporate line of Suffolk and has four paid firemen on duty at all times; the other station is located approximately three miles northwest of Suffolk at the intersection of County Roads, Virginia Route 604 and 640, and it has on duty two men at all times. From the above it can be seen that the entire area of the County, 427.70 square miles, as far as a first fire call is concerned, is dependent upon six to seven paid firemen, plus what volunteer aid is available.

These fire fighting facilities are hampered because of inavailability of water in most areas and because voluntary fire fighters are often not available in time of need, particularly during daylight when the men are at work in the pursuit of their various callings. The City provides fire fighting protection to the Louise Obici Memorial Hospital complex, which is located outside of the City without cost to the hospital or County.

The urban and urbanizing areas in the County are in need of a coordinated and integrated fire department with stations strategically located in or near such

areas, and adequate equipment, and full time employed and trained personnel to preserve and promote the safety of persons and property in such areas, and the need of such services, facilities and protection will increase as urban, commercial and industrial development expand. Suffolk can provide such service in the area sought for annexation.

Fire Prevention: Suffolk maintains a program for the administration and enforcement of regulations adopted to prevent fire and its containment once it starts, the investigation of fires of suspicious origin, the inspection of residential, business and industrial properties, hotels, theatres and schools and educational buildings and other places where numbers of people congregate, and for educating children in public schools and employees of hospitals in fire preventive measures. Such enforcement, inspection and programs are essential for the safety of people and property in urban communities. The County does not provide such services substantially in any of the areas of said County.

Police Protection: Suffolk maintains a coordinated and integrated police organization with personnel, equipment and facilities necessary for the preservation of law and order and the detection and prevention of crime in an urban community and the protection and safety of its inhabitants and property. Suffolk's police force is adequate in number of personnel, *organization*, management and equipment for the urban community it serves. Nansemond County has no trained professional police force, it has only a sheriff and deputies whose tenure of office are subject to election every fourth year, for law enforcement for the entire County.

People in the urban areas sought for annexation are in need of such police protection as the City is capable of providing. This need will increase as urban, commercial and industrial developments expand.

Public Health: The Suffolk Tri-County Health Department is operated by the State Health Department by agreement with the City of Suffolk and the Counties of Nansemond, Isle of Wight, and Southampton. It operates and maintains a well organized and coordinated Health Department designed for the needs of the City and the three Counties it serves. It consists of trained and professional personnel, clinics, and equipment with which it conducts well rounded programs and enforces measures to: preserve and promote public health, protect the inhabitants of the community from communicable and other diseases, abate nuisances detrimental to public health, provide medical care for the indigent, conduct edu-

ational clinics for the preservation and promotion of public health, and collection of morbidity and mortality statistics. There would be no change to this service in the areas sought for annexation. It would increase the City's and decrease the County's proportionate cost paid to the State Health Department.

Streets and Highways: Suffolk maintains a coordinated and integrated system of streets, highways and alleys, some of which are connected directly with those in the County. New streets, highways and alleys in the City are opened and improved, and existing streets, highways and alleys in the City are widened and improved as their use and needs of the urban community require.

Land for such purposes is acquired by the City, and the work of improvement is largely financed with City funds except in the cases of subdivisions. All streets, highways and public alleys are likewise maintained and kept in repair by the City.

The control of streets, highways and alleys and the orderly arrangements therein of underground and overhead facilities which provide public services is essential for the proper and orderly growth of a metropolitan area.

Suffolk also maintains a coordinated and integrated system of street lighting for its principal thoroughfares and streets and highways that are intensely used. Street lighting for other streets and highways and alleys is also provided according to a program based upon need and safety in their use. As the need arises and safety of the public and neighborhoods require, the street lighting system is extended or improved to provide reasonable illumination.

Suffolk also maintains and operates a coordinated and integrated program of periodic cleaning of its streets, highways and alleys and the removal of snow and ice from its principal thoroughfares and intensely used streets and highways.

The necessity for providing, maintaining, widening and improving and keeping in repair many City streets and highways, the lighting and cleaning thereof and removal of snow and ice therefrom, is in great measure dictated by the daily use made of such streets and highways by many people in the County.

With the aid of and in conjunction with the State Highway Department the County makes some provision for opening and improving new streets, highways and alleys and for widening and improving those existing when required by the needs of its urban and urbanizing communities. They rely chiefly upon others to provide such public means of transportation.

Except in a limited degree, the County does not provide street lighting for streets and highways in the urban and urbanizing areas sought to be annexed.

Suffolk maintains a tree planting and conservation program which is essential for the appearance and enjoyment of an urban community. The County has no such program.

Traffic Control, Research and Engineering: Suffolk maintains an agency which provides continuing scientific investigation and study of traffic movement, parking conditions and causes of accidents in order to improve and promote the convenient and safe use of streets and highways in the City. This program provides for the maintenance of hundreds of traffic regulatory signs, traffic signals, street name signs and highway route markers and the installation and maintenance of parking meters for regulating the use of streets and highways for parking vehicles.

The daily use of streets and highways in the City by vehicles or residents of the County and the need for places where such vehicles can be parked, contribute greatly to the traffic problems of the City and the responsibilities and performance of the functions of this agency.

Many areas in the County are in need of such services and the need will increase as further urban, commercial and industrial development in the metropolitan area takes
page 20 } place; yet the County, except in acutely congested places, makes no provision for meeting the needs for the safe use of streets and highways in the County, but relies upon agencies of the State for protection. Artificial, political boundaries hamper the installation and enforcement of traffic control measures which should be effective in the urban and urbanizing areas in the County to efficiently promote or protect public safety. Such service is badly needed in most of the urban areas sought to be annexed.

Storm Water Drainage: Suffolk maintains and operates storm water sewer systems, interceptors and drains by which surface water in streets, highways and alleys and water flowing in natural watercourses in the City is intercepted and collected and discharged into other natural watercourses which are adequate to effectively dispose of surface water. In addition to this, approximately 90 per cent of all City streets are provided with curbing or curb and gutters, both designed to control the flow of water, this can be required in all new sub-divisions. Such facilities are essential for the health, safety and welfare of the inhabitants of an urban and urbanizing community.

The County makes little provision for intercepting, collection and disposal of surface water except by keeping natural

watercourses cleared of obstructions and by the installation of culverts under some streets and highways, normally performed and paid for by the State Highway Department. The County has little or no curbs and gutters. As the County has become urbanized and streets and highways opened, surface water that normally was absorbed by infiltration and surface water that reached natural watercourses in such volume that it could be contained, now is accelerated

page 21 } both in volume and rate of flow so that the natural watercourses and culverts are not always sufficient to convey the water to its natural outfall without flooding streets and highways and private property in parts of the County and in the City in some cases. As other areas in the County become urbanized and developed the problem of surface water containment and disposal, flooding and damage to property and the adverse effects on public health will become more acute and severe. Inhabitants of urbanized areas and commercial enterprises and industries in the affected areas and others that will become involved have and will continually sustain loss and damage because of the lack of drainage systems and facilities to dispose adequately and effectively of surface water, unless greater resources are employed to alleviate such conditions.

Inspection Services for Public Safety, Health and Welfare: Suffolk maintains and operates an Inspection Department consisting of trained personnel for inspection of building during construction and thereafter, electrical work, and plumbing work, weights and measuring devices, etc. Regulations and standards are prescribed for the construction, alteration, repair and demolition of buildings and structures, the installation, maintenance, alteration and operation of boilers and unfired pressure vessels, fuel-burning equipment, electrical wiring, appliances and equipment, elevators and escalators, and water and sewage disposal systems in buildings and structures. Plans for such work are required to be submitted and reviewed to insure compliance with such regulations and standards. Permits are required to be obtained before such work is commenced and frequent periodic inspections are made of the work as it progresses to see that the regulations and standards are observed.

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Electric appliances and equipment offered for sale are inspected to insure compliance with safety regulations and standards. Weighing and measuring devices used commercially in retail, wholesale and industrial establishments are periodically inspected, the weight of packaged commodities, the sale of commodities by peddlers and hucksters and de-

liveries of coal and fuel oil are frequently investigated and checked to protect the public against fraud and deceit.

Persons who engage in the businesses and trades of installing electric wiring, appliances and equipment, elevators and escalators, and plumbing and water supply and sewage disposal systems in buildings and structures are required to demonstrate their knowledge and proficiency in planning and installing such facilities in accordance with such regulations and standards. Persons who are unable to pass such tests and examinations are not permitted to engage in such businesses or trades.

Such regulations, standards and services are essential in urban and urbanizing communities to protect and promote the safety, health and welfare of the inhabitants thereof. The County does not provide such services on a scale required for its urban and urbanizing communities. Residents of the County are benefited by the regulations, standards and services provided by the City, either when they are in the City or as the effects thereof transcend the boundaries between the City and the County.

Public Education: Suffolk maintains and operates well-rounded and coordinated programs and systems
page 23 } of public academic, general and vocational education. Adequate teaching, instructional, management and administration personnel is provided. Such programs and systems are essential in any community to meet the educational and training needs of children. Opportunities for employment and services in the Suffolk metropolitan area are in direct proportion to the extent and quality of education and training afforded by the public education system. It is essential that the people in the metropolitan area be afforded the same educational and training opportunities provided in Suffolk's school system.

Suffolk offers its school children a varied and comprehensive program leading to high school graduation. Such programs as Vocational Office Training, Industrial Cooperative Training, Distributive Education, Masonry and the Building Trades are all examples of work training programs that have been a standard part of the program of studies in Suffolk for many years. In addition, Suffolk has had a program of Driver Education for 25 years operating during the regular school term as well as during the summer. Moreover, students may elect from full programs of academic subjects including four (4) years of Latin and up to six (6) years in French and Spanish. For many years, opportunities for advanced studies in college level mathematics have been available to pupils.

For more than ten (10) years, the Suffolk City School System has offered complete instructional and clinical training programs in practical nurse education. The graduates of these programs become Licensed Practical Nurses, and the enrollment in these classes for adults has been open to Nansemond County residents as well as Suffolk residents.

Moreover, Suffolk City Schools has operated for page 24 } many years extensive evening programs for adults, open equally to County and City residents, such courses including vocational area, academic area, and basic education for County and City residents with low literacy levels. In addition, the Suffolk City Schools' system has operated for many years full and varied summer school programs open to both County and City pupils. In the past, Nansemond County has not had available for its pupils or citizens many of the programs included here.

Suffolk Public Schools have had enrolled regularly for the past 20 years at least 50 tuition paying County pupils who attend the Suffolk Schools during the regular day school term in order to receive courses and opportunities which they consider important. The tuition cost for such pupils attending the Suffolk City Schools has been paid in full by parents of such children; the City Schools do not accept tuition grant for non-resident pupils. This would be further evidence that County residents consider this program in Suffolk to be on a high level.

The quality of education in the Suffolk City system is generally recognized as outstanding. The City outranks not only Nansemond County, but every school division in Eastern Virginia in the total cost expended per pupil for education whether local funds only or total school funds expended are considered. Suffolk's ability to maintain its educational program ranks among the highest ten per cent (10%) of the Cities and Counties in the State and for several years has ranked as one of the top ten per cent (10%) of the Cities and Counties in Virginia whose high school graduates move on to higher education.

Should annexation be decreed, the City will page 25 } make available to the children in the annexed area every advantage now offered to children in the City. Coordination of the educational programs and their management for pupils living in the metropolitan area of Suffolk is essential for raising education levels required for the metropolitan area as it becomes more urbanized and more commercial and industrial enterprises locate in the area.

Public Library: Suffolk owns, maintains and operates a public library in a modern building designed as a library

and constructed in 1959. In addition to the thousands of books and magazines for the general adult reader, most of which circulate, facilities are provided for children in order to stimulate their interest at an early age, and research facilities, including up to date encyclopedia, periodicals, and papers, are provided for scholars who constantly use these facilities. Historical data, papers, etc., of Suffolk and Nansemond County are available.

Recreation: Suffolk operates varied and extensive recreational programs under the direction of a full time Director and Staff. Programs for "tots", elementary grades, teenagers, and adults are provided throughout the year. In addition, there are softball, baseball, and football leagues for various age groups. Golf, swimming, boating, and excellent fresh water fishing are available.

Gas for Domestic, Commercial and Industrial Use: Suffolk has an assured and plentiful supply of natural gas which is available to all parts of the City and to some parts of the County. The gas distribution system and service which it provides is operated by the Suffolk Gas Corporation, page 26 } which is located within the City. The Corporation maintains in Suffolk a standby plant to meet peak loads and other emergencies. The Corporation's source of supply is adequate for the foreseeable needs of the City and its proposed expansion.

Economic Growth and Development: Consolidation by annexation of the territory sought to be annexed with the City will accelerate the economic growth of the Suffolk metropolitan area. Suffolk's opportunities for economic growth are restricted by a total lack of industrial sites of any consequence. The economic growth of the County is restricted by the inadequacy of services and facilities for residential and industrial development.

It is the public policy of the Commonwealth to encourage the location of new industries in the State and expansion of existing industries. The General Assembly has created agencies of the State government and appropriated funds to advertise and disseminate information to attract the location of industry and to aid in the organization and operation of corporations created under the Virginia Industrial Development Act. It is the function of these agencies to make available information regarding industrial sites and other factors of interest and concern to industries, and to formulate and advance programs encouraging the location of new industries and expansion of others.

Industry is attracted by an assured, safe and plentiful water supply, systems for the disposal of sanitary sewage,

and adequate storm water drainage, streets, highways and all forms of transportation, fire protection, educational, cultural and recreational facilities and the quality of local
page 27 } government.

Joining of the territory sought to be annexed with the City will facilitate provision and extension of those services, facilities and improvements which will attract and are necessary for industrial development, and will enhance the metropolitan area's commercial and industrial advantages. Suffolk's form of government and the administration and management of its affairs is of the character and quality that can and will provide the services, facilities and improvements for the economic development of the metropolitan area.

Planning for Development of the Suffolk Metropolitan Area: Consolidation with the City by annexation of the territory sought to be annexed is necessary for planning the uses of land and the services, facilities and improvements necessary for its development before it is occupied. Land which should be logically used for residential development should not be devoted to other uses, and land which should be logically developed for commercial and industrial use should be devoted to such use.

No comprehensive land use plan can be an effective guide for the metropolitan area without some form of central authority responsible for the plan. Determinations must be made in advance of land uses and provision made for necessary services, facilities and improvements in fixed locations according to definite schedules. To prosper, a metropolitan area plan is essential for the economic growth and development of the area. Unrestricted and unguided development can be worse than none at all. The power to plan must be accompanied by the power to enforce and take action with respect to its application and execution in order that there be
stability and permanence in its effects.

page 28 } Substantial land, now vacant, rural, undeveloped or devoted to agricultural purposes in the territory sought to be annexed should be planned for and devoted to residential use. Substantial other land in the territory, now vacant, rural, undeveloped or devoted to agricultural purposes, particularly land lying in the vicinity of railroads passing *through* the City, and major highways, should be planned for and devoted to industrial use and development.

Consolidation with the City by annexation of the territory sought to be annexed will enable a centralized authority to develop a comprehensive, stable and permanent plan for the residential and industrial development of the metropolitan

area, and will permit economical extension of services, facilities and improvements for such development and use.

The County has not provided the services, facilities and improvements necessary for residential and industrial development so as to further the economic growth of the metropolitan area.

AREAS PROPOSED TO BE ANNEXED AND SIZES THEREOF

§3. The metes and bounds of the territory proposed to be annexed are as follows:

Beginning at a point at the intersection of the present east corporate boundary of the City of Suffolk and the south right-of-way line of the Norfolk and Western Railway Company (formerly the Virginian); thence running in an easterly direction along the south right-of-way line of the said Norfolk and Western Railway Company, crossing the Norfolk, Franklin and Danville Railway (formerly the Atlantic and Danville) and the Seaboard Coast Line Railroad page 29 } (formerly the Atlantic Coast Line) to the intersection of said south right-of-way line and the extension (in a southeastern direction) of a line 400 feet northeast of and parallel with the center line of State Route 614 (Suburban Drive); thence running in a northwesterly direction along the said line that is 400 feet northeast of and parallel with the center line of State Route 614 and its extension (crossing the Seaboard Coast Line Railroad) to its intersection with the southeast right-of-way line of the Norfolk, Franklin and Danville Railway; thence running in a northeasterly direction along the southeastern right-of-way line of the Norfolk, Franklin and Danville Railway 2830 feet, more or less, to the center line of an arm or branch of Burnetts Mill Creek; thence running downstream along the center line of the arm or branch and Burnetts Mill Creek as it meanders in a generally northwesterly direction (crossing State Route 642, which is Wilroy Road) to the center line of the Nansemond River, at a point on the line dividing the magisterial districts of Chuckatuck and Sleepy Hole; thence running along the center line of the Nansemond River, which center line is the line dividing the magisterial districts of Chuckatuck and Sleepy Hole, as it meanders in a generally northerly and easterly direction, to its point of intersection with the extension (in a southeasterly direction) of a line 800 feet north of and parallel with the center line of State Route 706; thence running in a northwesterly direction along the said line 800 feet north of and parallel with the center

line of State Route 706, and its extension, to its intersection with a line 400 feet east of and parallel with the center line of State Routes 32 and 10; thence running in a
page 30 } northerly direction along the said line, parallel to and 400 feet east of the center line of State Routes 32 and 10, to its point of intersection with the extension (in an easterly direction) of a line 400 feet north of and parallel with the center line of State Route 634; thence running in a westerly direction along the said line which is 400 feet north of and parallel with the center line of State Route 634 (and its extension in an easterly direction) to its intersection with the western right-of-way line of the Virginia Electric and Power Company transmission line; thence running in a southerly direction along the western right-of-way line of the Virginia Electric and Power Company transmission line (crossing U. S. Route 460) to its intersection with a line 400 feet north of and parallel with the center line of State Route 638; thence running in a westerly direction along said line which is 400 feet north of and parallel with the center line of State Route 638, and the extension thereof, in a westwardly direction (crossing State Routes 635 and 604) to the point of intersection with a line 400 feet west of and parallel with the center line of State Route 604; thence running in a southerly direction along said line which is 400 feet west of and parallel with the center line of State Route 604 to the point of intersection with a line 400 feet west of and parallel with the center line of State Route 640; thence running in a southerly direction along said line which is 400 feet west of and parallel with the center line of State Route 640 (across State Route 639) to the point of intersection with the south right-of-way line of the said State Route 639; thence running in a westerly direction with the south right-of-way line of State Route 639 to its point of intersection with the northwestern property line of the Roanoke Webster
page 31 } Brick Company (formerly American Brick Corporation); thence running in a southwesterly direction along the division line between the property of the said Roanoke Webster Brick Company and the land now or formerly owned by the A. C. Pruden Estate (which property line is shown on a plat of the American Brick Company's property recorded in the office of the Clerk of the Circuit Court of Nansemond County in Plat Book 6 at page 28), to the northeastern right-of-way line of the Norfolk and Western Railway Company; thence continuing in a southwesterly direction along an extension of the aforesaid division line between the property of the Roanoke Webster Brick Company and the property now or formerly owned by the A. C. Pruden

Estate (crossing the right-of-way of Norfolk and Western Railway Company and the Virginia Electric and Power Company transmission line) to the southwestern right-of-way line of said Virginia Electric and Power Company transmission line; thence running southeasterly along the southwestern right-of-way line of the said Virginia Electric and Power Company transmission line (crossing State Route 644 and the Norfolk and Western Railway) to the point of intersection with the north right-of-way line of the Seaboard Coast Line Railroad; thence running in a westerly direction along the north right-of-way line of the Seaboard Coast Line Railroad to the center line of an arm or branch of Speight's Run, said point being 2736 feet, more or less, west of Mile Post 21 and just north of a 36-inch culvert under said railroad; thence running in a southerly direction down the center of the arm or branch of Speight's Run, crossing the right-of-way of said Seaboard Coast Line Railroad at the said 36-inch culvert and running through a certain tract of

page 32 } 110.205 acres formerly owned by John D. Eure
(a plat of which is recorded in the office of the Clerk of the Circuit Court of Nansemond County in Plat Book 12 at page 15), to a point in the center of the said arm or branch of Speight's Run on the outside boundary of the said 110.205 acre tract, which point is the northwest corner of Section I Oak Ridge Estates (a plat of which is recorded in the office of the Clerk of the Circuit Court of Nansemond County in Plat Book 12 at page 66); thence along the arm or branch of Speight's Run and the outside line of the said 110.205 acre tract and the west line of said Oak Ridge Estates, Sections I and II, by recorded deed description, S 12° 32' E 545.00 feet; thence continuing down the arm or branch of Speight's Run four lines with the southern boundary of Oak Ridge Estates, Section II (a plat of which is recorded in the office of the Clerk of the Circuit Court of Nansemond County in Plat Book 13 at page 63) by deed description S 59° 07' E 179.71 feet; S 47° 37' E 261.25 feet; S 71° 52' E 201.16 feet; and S 86° 52' E 247.63 feet; thence continuing down the center line of the arm or branch of Speight's Run as it meanders in a southerly direction, passing north and east of the sub-division known as Pinaire and west of the sub-division known as Oak Ridge to its point of intersection with the north right-of-way line of U. S. Route 58, opposite the end of three 6-foot by 6-foot box culverts, said point being 780 feet, more or less, east of the center line of Faulk Road, measured along the north right-of-way line of U. S. Route 58; thence continuing in a south and easterly direction down the center line of Speight's Run, as it mean-

ders, crossing U. S. Route 58 at the said three 6-foot by 6-foot box culverts to its intersection with a line 400 feet southwest of and parallel with the center line of State Route 646 (Turlington Road); thence leaving the center line of Speight's Run and running in a southeasterly direction along the said line which is 400 feet southwest of and parallel with the center line of State Route 646, and the extension thereof (the said extension disregarding the change in direction to the southwest of said Route 646 at its intersection with State Route 688) until it intersects with a line 400 feet southwest of and parallel to the said Route 688; thence running along the said line which is 400 feet southwest of and parallel with the center line of State Route 688 and the extension thereof in a southeasterly direction to its intersection with a line 400 feet east of and parallel with the center line of the U. S. Routes 13 and 32; thence running in a northerly direction along said line which is 400 feet east of and parallel with the center line of U. S. Routes 13 and 32, to the point of intersection with a line 1195 feet south of and parallel with the center line of State Route 731; thence running in an easterly direction along said line which is 1195 feet south of and parallel with the center line of State Route 731, and the extension of said line, to the east right-of-way line of the Seaboard Coast Line Railroad; thence running in a northerly direction with the east right-of-way line of the Seaboard Coast Line Railroad to its intersection with the center line of Hickmans Branch, said point being on the present southern corporate boundary line of the City of Suffolk; thence running first westwardly along the existing boundary line of the City of Suffolk, then continuing clockwise along the said boundary line to the point of beginning, containing 17.58 square miles by a planimeter measurement.

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ATTACHED MAPS

Annexed hereto and expressly made parts hereof, are two certain maps as prepared by Hayes, Seay, Mattern & Mattern, consultants of Roanoke, Virginia and Washington, D. C. dated June, 1968 as follows:

(1) one bearing the title "City of Suffolk, Virginia and Environs—Existing and Proposed Corporate Boundaries and Existing General Land Use in the Annexation Area" and among other matters indicating generally present subdivisions as shown by street layouts, residential areas, industrial areas, farm areas, vacant areas, commercial areas,

public or semi-public areas, and other present land uses in the area proposed for annexation.

(2) the other entitled "City of Suffolk, Virginia and Environs—Possible Future Land Use Proposed Annexation Area" and indicating presently proposed commercial, industrial, residential, and public and semi-public uses in the area proposed for annexation.

EFFECTS OF ANNEXATION

§4. The County will be relieved of expenses proportionately larger than the loss of revenue it would sustain. Its government will be relieved of growing problems for which it is not designed. There will remain in the County substantial unincorporated territory and the County will be left with resources sufficient in area, population and sources of revenue to adequately support a county government and public schools without unreasonably affecting its present tax policy and structure or its present standards of service.

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GENERAL TERMS AND CONDITIONS UPON WHICH ANNEXATION IS SOUGHT AND PRO- VISIONS PLANNED FOR FUTURE MANAGEMENT TERRITORY

§5. The City hereby sets forth the terms and conditions upon which it desires to annex the territory in the County and the provisions for the future management and improvement thereof as follows:

(a) The territory sought to be annexed and the functions of its government with respect thereto will be coordinated within the City's governmental and administrative organization and structure as soon as practicable after annexation is decreed. The City will provide the same managerial services for the area as are provided for the present City within the framework of the City's charter and general law and in accordance with ordinances and regulations adopted and in force at that time.

(b) The City will assume and become obligated for a just proportion of the indebtedness of the County and for all indebtedness of any district wholly within the territory in the County sought to be annexed, and will undertake the performance of all valid contracts the County or any such district has entered into with others applicable to or in the territory sought to be annexed.

(c) The City will reimburse the County for the value, at

the time of annexation, of its public improvements in the territory in the County sought to be annexed as provided for and in accordance with §§ 15.1-1042 and 15.1-1043 of the Code of Virginia.

(d) The City, as soon as practicable after annexation is decreed, will provide the territory sought to be annexed with all general municipal services and facilities, which do not require expenditures for capital improvements, that are provided by the City for its inhabitants.

(e) The City will discontinue charges required page 36 } to be paid by residents of the territory for using facilities provided by the City, and will equalize and make rates charged for utility services uniform throughout the City and the territory sought to be annexed.

(f) The City will incorporate in its five year programs for capital public improvements such projects for extending services and facilities into the territory sought to be annexed as are necessary to provide for the needs of the metropolitan area, and will make appropriations therefor as such needs require and can be financed with available sources of revenue.

(g) The City will give preferred and intensive attention to the preparation and adoption of a master plan for the development of the territory sought to be annexed, particularly the vacant, rural, undeveloped and agricultural lands, for the orderly, practical and economic use of the land area for residential, commercial and industrial purposes, and the preparation and adoption of a comprehensive zoning ordinance regulating such uses of the land; and will plan and extend its programs for municipal services and facilities and for capital public improvements to encourage urbanization and commercial and industrial development in the County.

PROCEEDINGS FOR ANNEXATION

§6. That the City Manager and City Attorney are authorized and directed to institute and prosecute, as soon as practicable, in the name of the City of Suffolk, any and all legal proceedings necessary to consolidate the territory sought to be annexed with the City of Suffolk by annexation by proper decree or judgment of a court of competent jurisdiction upon the terms and conditions set out in this ordinance. The City Manager and City Attorney are hereby authorized to employ such special legal, technical, expert and other assistance as, in their discretion, is necessary to perform the duties enjoined upon them.

PUBLICATION

§7. The ordinance shall be published in accordance with the provisions of §15.1-1035 of the Code of Virginia.

EFFECTIVE DATE OF ORDINANCE

§8. The ordinance shall be in force and effect June 20, 1968.

I, Henry C. Murden, City Clerk of the City of Suffolk, do certify that the foregoing is a true copy of an ordinance entitled: "An Ordinance to provide for the extension of the corporate limits of the City of Suffolk, Virginia, pursuant to the provisions of Article 1, Chapter 25, Title 15.1 of the Code of Virginia, by the annexation of certain territory in the County of Nansemond; to declare the policy with respect thereto; to set forth the necessity and expediency thereof; to define the metes and bounds and area of the territory sought to be annexed; to show on maps annexed to this ordinance information concerning generally existing sub-divisions, industrial areas, farm areas, vacant areas and other land use; and information as to possible future uses of property in the territory sought to be annexed; to set forth the effects thereof on the County and its ability to support adequately the County government and public schools; and to prescribe the general terms and conditions upon which annexation is sought and provisions planned for future management and improvement of the annexed territory.", which ordinance was adopted by the Council of the City of Suffolk composed of five members, at a regular meeting of the Council held on the 20th day of June, 1968, by a recorded vote of Ayes 5 Noes 0.

And I further certify that the two maps hereto attached, described in said ordinance, and bearing my signature for identification, are exact copies of the said maps which are a part of said ordinance.

Given under my hand this 20th day of June, 1968.

Henry C. Murden
City Clerk of the City of Suffolk

(Corporate Seal)

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MOTION TO DISMISS

Now comes the County of Nansemond and moves the Annexation Court to dismiss this annexation proceeding for the reason that the City of Suffolk has failed to comply with the requirements of Section 15.1-1033 of the Code of Virginia, as amended, in the following respects:

1. The City of Suffolk failed to include in its ordinance herein the "metes and bounds" of the area sought.

2. The City of Suffolk failed to include in its ordinance herein detailed information as to the provisions planned for the future improvement of the annexed territory, including the provision of public utilities and services therein.

Wherefore, the County of Nansemond prays that this Motion be granted and this proceeding be dismissed.

COUNTY OF NANSEMOND

By Robert C. Fitzgerald
Of Counsel

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Filed this the 16th day of August, 1968

Teste: John H. Powell, Clerk

By Gloria H. Marger, D. C.

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MOTION FOR BILL OF PARTICULARS

The petitioner, the City of Suffolk, moves the Court for

an order requiring the defendant, County of Nansemond, to state with particularity:

1. wherein the annexation ordinance of the City of Suffolk fails to comply with the provisions of Section 15.1-1033 of the Code of Virginia as amended as to the description of "metes and bounds"; and

2. wherein the said City has failed to include in said ordinance detailed information concerning plans for the future improvement of the annexed territory, including the provision of public utilities and services therein; as asserted in the Plea to the Jurisdiction previously filed herein by the defendant, Nansemond County.

City of Suffolk

By David J. Mays
Of Counsel

Filed this the 10th day of Sept., 1968.

Teste: John H. Powell, Clerk

By T. M. Culpepper, D. C.

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BILL OF PARTICULARS OF MOTION TO DISMISS

Now comes the County of Nansemond, by counsel, in response to the Motion of the City of Suffolk and files this Bill of Particulars of the Motion to Dismiss formerly filed herein.

The County of Nansemond states particularly that:

1. The Ordinance herein of the City of Suffolk does not contain the "metes and bounds" of the area sought as required by Section 15.1-1033 of the Code of Virginia. The description contained in the Ordinance fails to conform to any acceptable definition of "metes and bounds".

2. The Ordinance of the City of Suffolk herein fails to comply with the requirements of Section 15.1-1033 of the Code of Virginia in that it does not contain detailed information of the provisions planned for the future improvement of the

annexed territory, including the provision of public utilities and services therein.

WHEREFORE, having complied with the said Motion for Bill of Particulars, the County of Nansemond prays that its Motion to Dismiss herein be granted and this proceeding be dismissed.

COUNTY OF NANSEMOND

By Mr. Fitzgerald
Of Counsel

Filed this the 25th day of Sept., 1968.

Teste: John H. Powell, Clerk

By T. M. Culpepper, D. C.

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ANNEXATION

The County on May 13, 1969 moved to dismiss the petition on the grounds that the City annexation ordinance did not contain (1) a "metes and bounds" description of the area sought and (2) "a general statement of the terms and conditions upon which annexation is sought, and the provisions planned for the future improvement of the annexed territory, including the provision of public utilities and services therein", as required by Section 15.1-1033, subsections (a) and (c) of the Code of Virginia.

Judge S. Bernard Coleman and Judge Harold H. Purcell, constituting a majority of the Court, sustained the motion to dismiss on the first ground stated above. Judge Purcell in giving the opinion and decision of the majority stated that the term "metes and bounds" as used in the statute means "courses and distances", and since the description in the ordinance contained few "courses and distances", the ordinance did not comply with the statute and is not sufficient.

I dissented.

In my opinion the statute does not require a description in strict and literal engineers' language but only sufficient definiteness to enable a non engineer to know where the location of the line is. The description in the ordinance refers to

readily understandable monuments such as railroad rights of way, public roads, rivers and streams. After a careful reading thereof I am of the opinion that any surveyor, engineer or layman can walk the line and follow it on the ground with reasonable certainty. I can understand the description more easily and fully than many courses and distances descriptions that I have encountered in a fairly active real estate law practice.

page 140 } Counsel for both sides state that some annexation courts have taken my view of the requirements of Section 15.1-1033(a) and no annexation court has taken the view of the majority of this court. While descriptions similar to the one in the instant case have been before the Supreme Court of Appeals on some occasions, the particular point as to "metes and bounds" has apparently not been argued there in an annexation case. The Supreme Court of Appeals has, however, tacitly referred to descriptions similar to that in this case as "metes and bounds" descriptions.

The majority of this annexation court has applied a strict construction to the term "metes and bounds". I would apply what, in my opinion, is a more practical construction and find the ordinance description to be in substantial compliance with the statute. I would therefore overrule motion to dismiss.

George F. Whitley, Jr.

May 14, 1969

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FINAL ORDER

This proceeding came on to be heard on the 13th day of May, 1969, before the Special Annexation Court heretofore appointed, upon the petition for annexation of the City of Suffolk, and the Motion to Dismiss filed herein by the County of Nansemond, and was argued by Counsel.

It appearing to the majority of the Court that the Motion to Dismiss of the County of Nansemond is well taken in that the annexation ordinance herein fails to comply with the requirements of Section 15.1-1033 of the Code of Virginia, as

amended, and that, therefore, this Court lacks jurisdiction to hear and determine this proceeding; it is, therefore,

ADJUDGED and ORDERED that the said Motion to Dismiss be and the same is hereby granted, and this proceeding is dismissed.

To which ruling and order counsel for the City of Suffolk duly excepts.

AND THIS ORDER IS FINAL

Enter this July 24, 1969.

Harold H. Purcell, Judge of
the Ninth Judicial Circuit

S. Bernard Coleman, Judge of
the Thirty-Ninth Judicial
Circuit

Judges constituting the
Majority of the Court

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Dissenting

George F. Whitley, Jr., Judge of
the Second Judicial Circuit

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NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

To the Clerk of the Circuit Court of Nansemond County:

City of Suffolk, petitioner in the above-styled case, hereby gives notice of appeal from the Order entered on July 24, 1969, assigning as error, the following:

The three judge annexation Court erred in sustaining the defendant's Motion to Dismiss and dismissing this action on the ground that the annexation ordinance fails to comply with the requirements of Section 15.1-1033 of the Code of Virginia as amended.

City of Suffolk

By David J. Mays
Of Counsel

Alpheus J. Chewning, III

Filed this the 18th day of August, 1969.

Teste: John H. Powell, Clerk

By T. M. Culpepper, D. C.

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Stenographic transcript of the testimony introduced and the proceedings had upon the trial of the above-entitled case in said Court on May 13, 1969 at 10:00 o'clock a. m., before the Honorables Harold H. Purcell, George Franklin Whitley and S. Bernard Coleman, Judges.

APPEARANCES:

Messrs. Mays, Valentine, Davenport, and Moore,
by Mr. David J. Mays, and
Mr. M. Erskine Watkins, appearing
on behalf of the City of Suffolk.

Messrs. Robert C. Fitzgerald and
James N. Garrett and Robert E. Gillette,
appearing on behalf of the County of
Nansemond.

* * * * *

page 14 } ALPHEUS J. CHEWNING, III, called as
a witness on behalf of the County, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Fitzgerald:

Q. Would you state your full name, please, sir?

A. Alpheus J. Chewning, III.

Q. And your address?

A. 3908 Thalia Drive, Virginia Beach, Virginia.

Q. Your occupation?

A. I am a registered professional engineer in the City of Virginia.

Q. Have you prepared a statement of your professional qualifications?

Alpheus J. Chewning, III

A. Yes, sir, I have.

Q. Is that it?

A. It is the statement of my qualifications.

Mr. Fitzgerald: I offer this as County's Exhibit Number One.

Judge Whitley: All right, this will be received as County's Exhibit Number One, there being no objection.

(Whereupon, the foregoing document was marked for identification as Nansemond County Exhibit Number 1.)

page 15 } Mr. Fitzgerald: If it please the Court may I inquire of counsel for the City if there is any question concerning the qualifications of this witness to testify in matters relating to survey?

Mr. Mays: There is as to survey. We do not his qualifications as an engineer.

Mr. Fitzgerald: Then I will have to inquire as to his qualifications in the field of surveying.

By Mr. Fitzgerald:

Q. Mr. Chewning, what is your educational background?

A. I have a Master's—Bachelor's Degree in engineering from VPI and a Master's Degree from the same school. The first degree was in 1938, the second degree was in 1939.

Q. In the course of your studies were you required or did you study surveying?

A. Yes, sir, I did. As part of my schooling I studied the theory and practice of surveying land.

Q. What professional licenses do you hold?

A. I hold a license as a registered professional engineer in several states, one of them being the State of Virginia.

Q. How long have you held a license as a professional engineer?

A. I have been licensed in Virginia since 1951.

Q. Could you tell the Court whether or not as a part of examining for licensing as a professional engineer you were examined in the field of surveying?

A. Yes, sir, I was.

Q. Will you tell the Court whether or not as part of your licensing as a professional engineer you were licensed to do surveying?

A. As part of the engineering work that we do I am charged with responsibility of the surveys and measurements

Alpheus J. Chewning, III

that we make in connection with all of our work of various natures. We get into a lot of engineering projects involving highways, streets, roads, subdivisions, water, sewer, storm drainage, electric, power lines, telephone lines, gas lines, railroads, wharves, docks, things of that nature, which as a registered professional engineer I do the measuring and do the surveying of that.

I do not under my own name prepare a plat of records because that is peculiarly reserved for land surveyors for the purpose of knowing what engineering does and what surveying does and the various meanings of the word. I am completely familiar with that aspect of surveying and engineering, where they entwine in this particular field.

Q. In these projects that you have spoken of page 17 } does that require you to use the art of professional surveying to do those projects?

A. Yes, sir, it does.

Q. How long have you practiced in your field as a professional engineer?

A. Since 1951.

Mr. Fitzgerald: You may inquire as to the qualifications.

Mr. Mays: Have you been licensed as a surveyor as distinguished from an engineer in the State of Virginia?

The Witness: No, sir.

Mr. Mays: I would like to be heard on this, your Honor.

Judge Whitley: Yes, sir.

Mr. Mays: The statutes provide the different types, Title 54-17. This is a definition of the types of licenses that are given in the different categories here. And if I may read the statute it sets forth:

"The following terms, as used in this Chapter, shall have the meaning given in this section:

"(1) 'Architect' shall be deemed to cover an page 18 } architect or an architectural engineer.

"(2) 'Professional Engineer' shall be deemed to cover a civil engineer, mechanical engineer, electrical engineer, mining engineer, metallurgical engineer or a chemical engineer.

"(3) (a) 'Land Surveying' includes surveying of areas for their correction, determination and description, and for the conveyancing, or for the establishment and re-establishment of internal and external land boundaries, and the plotting of land and subdivisions thereof. The plotting of land and subdivisions thereof may include the laying out and plot-

Alpheus J. Chewning, III

ting of roads, streets, and sidewalks, topography and contours setting forth road grades and determining drainage on the surface." Title 54, Section 17.

Turning to Subsection 37 we find "Exemptions from provisions of Chapter.

"The following shall be exempted from the provisions of this Chapter:

"(1) Practice of Professional Engineering and land surveying by a certified architect when such practice is *incidental* to what may be properly considered an architectural undertaking.

"(2) Practice of architecture and land survey-
page 19 } ing by a certified professional engineer when such
practice is *incidental* to an engineering project."

What we are dealing with here today is not an engineering project at all. It is a layout of a proposed annexation line for a city. It is not a function of an engineer as such.

The engineer who qualifies under these qualifications as an engineer may be a mining engineer, chemical engineer or any kind of engineer and gets a certificate as an engineer. But if he goes into business as a profession of surveying as such he has to meet the qualifications of a surveyor and be certified accordingly.

This witness is here to testify in the capacity of a surveyor. And under the test laid down we object to any testimony from him as a surveyor.

Mr. Fitzgerald: May it please the Court I haven't called this witness for the purpose of drawing plats or for what Mr. Mays has said to the Court. I think it is very apparent from the testimony of this witness and what Mr. Mays has said that the field of surveying is encompassed in the field of engineering, only certain things a surveyor can do. But in
the field of engineering as Mr. Chewning has tes-
page 20 } tified, in the field of surveying, he does this work
in connection with the engineering projects.

Suffice it to say that the purpose of this calling of this witness is in regard to the meaning of the words metes and bounds and the words metes and bounds as looked upon by a person, a professional engineer who is educated and trained in surveying.

The Court can take into account that he does not prepare solely plats and surveys, he does more than that. The Court can take into account perhaps that some more other witnesses may be solely just a surveyor but we are presenting this witness from the professional qualifications as to the usage of

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the terms metes and bounds as it is used in his profession. The Court can take into account what profession that is.

Mr. Mays: I understand, your Honor, he is merely to give the Court the definitions as to what metes and bounds means and not go into the question of surveying itself.

Mr. Fitzgerald: He has to relate these definitions in the description given in this *ordiance* as to whether or not it is a metes and bounds description. He is certainly going to do that, because this is no less a description in the page 21 } work that he does in his engineering projects than the description used for any other purpose.

So I think he is qualified to give his opinion as a professional engineer too.

Mr. Mays: We reserve our objections.

Judge Whitley: The Court will recess for a few minutes.

(Whereupon, a short recess was taken.)

JUDGE WHITLEY: The Court finds that the witness is qualified as an expert and overrules the objection.

Mr. Mays: We take our exception.

By Mr. Fitzgerald:

Q. Mr. Chewning, would you tell the Court whether or not you have examined the descriptions of the area sought for annexation in this case?

A. Yes, sir, I have.

Q. Will you tell the Court whether or not in your opinion it is a metes and bounds of an area?

A. The portions of the annexation ordinance, Paragraph 3 says:

"The metes and bounds of the territory proposed to be annexed are as follows: "Is not in my opinion a metes and bounds survey.

Q. Would you tell the Court in your opinion page 22 } what a metes and bounds of an area is?

A. Yes, sir, I think your Honors will have to go back to the two words embodied in that phrase "metes and bounds." They are two separate and distinct identities. A metes is the measurement of a line. It is very commonly given as a bearing. And a distance like north 45°, east 200 feet, that is the measurement of a line. A line can have a measurement other than a straight line. It can be an arc of a curve. And you begin and say this curve to the right or left with such and such a radius and give the length of the arc or give

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the angle of it or two of the components from which you can compute the curve.

Now that is the mete of a curve. It is not a straight line. It does not have a bearing but it has an angular displacement in the central angle or it has a length on the ground to a radius. Now that is a mete.

Now the word bound means in engineering terms a physical marker at the beginning and end of each mete. You begin at a stone monument or an iron pin or a pipe or an oak tree or a stump or some other discernible marker on the ground that you can go out there and look at and see. Then you go from this bound that begins the description of a traverse or parallel of land or highway or easement for a sewer line for whatever you are doing. And you go, your mete from one bound you go the mete north 45° , east 200 feet to a concrete monument. That second concrete monument is your
page 23 } bound. That is the common accepted in engineering work definition of metes and bounds.

I think you will find that in many cases lay people have confused this by using it as if it is one word, like metes and bounds, description. So when you are saying a description of land or a line by metes and bounds you must have the two ingredients. One is metes, which is distance and directions, the second you must have the bounds.

Now from the word metes the bearings and distances you can draw a plat, you can draw a map of that line. You do not have to have the bounds to draw a map. But you must have the metes. So you can start on a piece of paper and put a point and go with your angular, set a north out, go with your angular direction so many feet to a point, then you go west 200 feet to a point. That is what is commonly referred to as a surveyor's description or a boundary description without the word bounds being involved. You can make a plat—

Q. Excuse me, I will interrupt you at that point and ask you whether or not you can from the description contained in this ordinance, from that description draw a plat from it?

A. No, sir, you cannot.

Q. Could you go on and tell how the bounds of a description are used?

A. The bounds called for in the definition of the phrase metes and bounds would mean the physical object to the ground where you can go out and look at it, stand
page 24 } beside it and look towards another bound. It may be a pin in the ground that you may not be able to see but you will be able to go and find the other point

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on the ground. And the mete between the two will tell you wheher it is a straight line or a curved line.

Q. Mr. Chewning, will you state whether or not the description contained in the ordinance for the most part contains bounds?

A. No, sir, there are no bounds described in the ordinance. For instance it starts out:

"Beginning at a point at the intersection of the present east corporate boundary of the City of Suffolk and the south right-of-way line of the Norfolk and Western Railway Company."

Now that point has no dimensions, has no width, no length, nothing there to bound the point that you can go out on the ground from this, based on this description, you cannot go out there on the ground and find that starting point. You cannot straddle it, you cannot stand beside it because it is not described.

Beginning at what? In other words a point is not a bound because it is not physical. A point as a theoretical entity has no dimensions. So throughout the ordinance it gives you the point but it does not give any bounds in this description whatsoever.

Q. Would you now refer to the ordinance and page 25 } point out to the Court these inadequacies or lack of metes and lack of bounds as it goes throughout the description contained in the ordinance?

A. The first is that there is no bound stated. The metes are generally given and I would call it a lay description. Because it does not have direction except in the vaguest of terms and it has no dimensions.

For instance we will start at the first one. We begin on the "Southern right-of-way line of the Norfolk and Western Railway Company (formerly the Virginian); thence running in an easterly direction along the south right-of-way line of the said Norfolk and Western Railway Company, crossing the Norfolk, Franklin and Danville Railway (formerly the Atlantic and Danville) and the Seaboard Coast Line Railroad (formerly the Atlantic Coast Line) to the intersection of the said south right-of-way line and the extension (in a southeastern direction) of a line 400 feet northeast of and parallel with the center line of State Route 614 (Suburban Drive); * * * * to its intersection."

That is a point. There is nothing there on the ground to show where that intersection is. That bound is completely misleading.

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I checked with the State Highway Department on maps and plats of secondary roads and in the far majority of cases they have none. The roads were put in long
page 26 } before they kept adequate records. You can find records of 460, US 58 and some of the state primary roads like 32 and Route 10, especially where they have been repaired within the last 20 or 30 years. But a lot of these roads simply do not have plats. And to say with the center line of a road is frankly, you would have to do quite a bit of research work to really determine where that center line is with respect to the Norfolk and Western Railway boundary line or whatever railway they are talking about.

For instance if you did have a plat of the railway in which courses and distances were called for you have no way of relating that to the center line of this particular road. So you don't know how far you are going out easterly, as the ordinance says, to this intersection. You don't know whether it is 2,000 feet or 10,000 feet.

From this ordinance here, for that first part of that line you could not draw it on a plat, on a planning sheet of paper. You cannot draw it and you could not go in the field and find the terminus or the bounds of either one of these lines.

Q. Speaking of secondary highways, Mr. Chewning, does it necessarily follow that the right-of-way, wherever it may exist, is the same width throughout the length of any particular secondary road?

A. No, sir, the right-of-ways vary in width.

page 27 } Q. Could you tell the Court whether or not the right-of-way on any given side or any given half of secondary road need be the same width all along?

A. No, sir, it need not be. Some cases we have run across where secondary roads vary because people have donated the land or the state has acquired extra land. And the difficulty you have in the field of determining an accurate bound is that where is the center line. You could not assume that the middle of the pavement is the center line of the right-of-way.

Q. Will you tell the Court in this description as contained in this ordinance how many state secondary highways are used as a reference?

A. They use as a reference ten different secondary highways in which they state the lines shall run parallel to it. Some cases from as much as 300 feet off of it to one case where it says that the line is 1195 feet parallel to a secondary road, of which I cannot find any plat.

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Q. Mr. Chewning, could you go out on the ground and put out these lines that are 300 feet from some center line or right-of-way line from one of these highways?

A. No, sir, you cannot do it with any degree of accuracy. And for a person that does not have surveying instruments to measure this 1195 feet it would be next to impossible from a practical standpoint.

page 28 } Q. Would you tell the Court whether or not you have traveled and inspected these state highways that are used in the description as reference?

A. Yes, sir, I have.

Q. And can you tell the Court whether or not from your observation there are buildings built at various distances back from the pavement of these highways?

A. Yes, sir, they are.

Q. In your work in annexation cases is it important to know whether these buildings are within or without the area sought for annexation?

A. Yes, sir, it is.

Q. Can you tell the Court whether or not your definition that you have given of metes and bounds is supported by various engineering and surveying authorities?

A. Yes, sir, I looked into the reference of textbooks and reference books used in the field of engineering to determine whether the definition of metes and bounds as I have used it is accepted within the profession.

Q. What reference did you refer to?

A. I have one here called "*Surveying for Civil Engineers*" by Phillip Kissam, published by McGraw Hill Company, 1956.

And on Page 283 it says "Description by courses and distances often called running descriptions have developed a conventional form. In these descriptions, it is page 29 } customary first to describe a point of beginning and then to describe the direction and length of the boundary lines as one would traverse the boundaries around the parcel, beginning with the boundary along the most important public right-of-way. When the joiners are also stated, the description is said to be stated by metes and bounds."

Now another one was the book "*Elementary Surveying*" by Breeden Hosmer, 1958, published by John Wiley and Sons.

Page 109 "Property surveys. Surveys of land are usually made for one or more of the following purposes; (1) to furnish an exact description of the boundaries; (2), to determine the enclosed area, or (3) to furnish data for making

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a plan. The instruments and methods used will depend on the land value and use to be made of the results of the survey.

"The usual practice is to begin at any convenient corner on the boundary and measure distances and angles (or distances and bearings) in the order of which they occur. This connected series of lines and angles is known as a traverse."

We have another one which is a book on survey theory and practice by Raymond E. Davis and Francis S. Foote, Fourth Edition, 1953.

Page 567, "When the bearings and lengths of the lines are thus given the tract is said to be described by metes and bounds."

page 30 } Now in another reference published by the United States Government, Department of Agriculture, 1958 year book on Agriculture, on Page 190 it says:

"Each tract of land has its own legal description which distinguishes it from all other land. It is the legal description that appears on the deed of transfer. The two major systems in the United States are Metes and Bounds on the one hand and a Rectangular Survey on the other."

Now as a side the rectangular survey is not used in Virginia. It is used in most of the western states where you have sections and quarter sections and things of that nature.

It continues to describe in this government publication their definition of metes and bounds. And I will quote:

"The 13 original Colonies followed the Metes and Bounds method: A surveyor began at some point at the boundary of the tract to be described and then recited the courses and distance from point to point around the tract. An example of the old Metes and Bounds description might be "Begin at the middle of a large white pine stump, starting in the west side line of Simon Vender Cook's land and on the southside of the main road that leads to the new city, and there is also a fence that extends a little to the west of Simon Vender Cook's bar, which said fence, if it were to run across a said field southerly would run to the middle of said
page 31 } stump; and running thence north 2 degrees east, 19 chains and 50 links to a small white oak tree,' and so on, 'until one gets to the point of beginning.'"

I would like to point out, Mr. Fitzgerald, that that description there is very illustrative of metes and bounds. You start at a bound, something that is described that you can go out and find, then it gives the north 2 degrees east, 19 chains and 50 links. That is your mete. So you come back to the same description throughout.

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Q. Mr. Chewning, without what you have described as the metes of a description, can you compute the area, the size of an area?

A. If you will eliminate the metes you cannot compute the area.

Mr. Fitzgerald: Your witness.

CROSS-EXAMINATION

By Mr. Mays:

Q. Mr. Chewning, I understood you to say that in making any survey of the boundary lines on an annexation case it is necessary to have some point that you can actually fix; is that correct?

A. You need a bound to fit within the phrase metes and bounds.

page 32 } Q. That means you start at a designated point?

A. Yes, sir.

Q. Now when you leave that point is it necessary to have a compass bearing in this case?

A. If you do not have a compass bearing you must give the angle at each one of the bounds. That is an acceptable method. From that you can either assume a bearing or determine one.

The purpose of a bearing basically is to determine the angle.

Q. You say that is one of the ways, I understood you to say. But let's take a point and let's say that point is the center line of a right-of-way. And then the right-of-way may be partly curved, partly straight, so that you can't get an angle, you can't get an exact arc. Are you free to describe the center line or one line of that right-of-way as a boundary line of the proposed city?

A. If you do describe it that way, Mr. Mays, it will not be a metes and bounds description.

Q. Right. Suppose you are drawing a line between magisterial districts and you say that the line will move in a generally westerly direction between Magisterial District A and Magisterial District B 1,250 feet. Would that meet your test?

A. I don't quite understand.

page 33 } Q. I am suggesting that a boundary line might be run between a common boundary of two magisterial districts. And without determining the angle at all you would certainly safely say that from that point in a

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generally westerly direction along the common boundary line of such magisterial district, of one thousand and so many feet, would that be a proper description?

Mr. Fitzgerald: May it please the Court, this witness has not testified as to what is required in annexation or what is required in magisterial districts. He has simply testified as to what is a metes and bounds description. And whether or not the description in this ordinance is a metes and bounds description.

What is required of annexation or what is required of magisterial districts is a matter of law and I object to the question.

Mr. Mays: I say the whole thing before us is a matter of law.

By Mr. Mays:

Q. Well, aside from that annexation, would that be a suitable description?

Judge Whitley: Just a minute, I don't believe we have ruled on the objection.
page 34 } The objection is overruled.

Mr. Fitzgerald: Note my exception. If your Honor please, we object to that. It isn't a question of what is a proper description, opinions may vary. The Statute says metes and bounds. And what would satisfy Mr. Mays or this witness as to what would be proper or improper is not proper.

Mr. Mays: I will except to that.

Judge Whitley: We are getting back to whether he has answered it. The matter of the Court on engineering—he is on cross-examination so the Court will be glad to hear whatever his opinion is if he has one. He is speaking objectively as an engineer. That is his province to.

Mr. Fitzgerald: But isn't this the real decision that the Court has to make? Aren't you asking him what the Court has to decide?

Mr. Mays: May I make a statement to show what I am leading up to? This matter has been passed on by the Supreme Court of Virginia more than once. It has been passed on by six or eight or more annexation courts. Only recently, right here in Franklin, before that Petersburg, on a different point in Petersburg, if I must qualify that. Certainly in Chesterfield and Richmond we have been all over

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this with other courts. I am not saying that this
 page 35 } Court is bound by what other three-judge courts
 have done but this court is bound by what the
 Supreme Court has said.

I have here today the annexation ordinances of the City of Richmond, in '38, '61, Chesterfield in '61, Petersburg, Franklin, Alexandria, and tell you what the courts have done, introduced these descriptions as your exhibits and show what the courts have done in this case. And I am asking this witness about this question, asking along this line of examination in order to establish what he knows about the meaning of metes and bounds.

I think the Court has said and I believe that we have only here a question of law. But I don't want to leave him go wild on the witness stand.

Mr. Fitzgerald: I didn't mean to argue this point right now. What the Supreme Court has said and other annexation courts have said we will argue later. I certainly take issue with the fact that this description of this ordinance has ever been considered by any other court.

The witness has been put on and asked an engineering point of view, from this description what the metes and bounds mean, that is all. Not to argue what has been done in other cases.

page 36 } Judge Whitley: You all could go into the argument of the whole case at this time but the witness is on cross-examination and if counsel will confine himself as much as possible we will let him proceed for awhile. If he goes too far the County may renew their objection.

The objection is overruled.

The Witness: The question was whether such a description was a proper one, which brings to mind proper for what purpose?

I would say for the purposes of describing something like a mosquito control district it would be a proper description. But it is not proper if you refer to a metes and bounds description, if that is what is required to describe a mosquito control district it would not be proper. But you are just going to describe something generally.

The annexation ordinance is a description, it describes what you would normally tell a surveyor or engineer to do to prepare a metes and bounds description but it is not a metes and bounds description in itself. You must start somewhere in telling the engineer what to do to prepare a metes and bounds survey. And you need some description to start.

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You are not going to let him get out here and
page 37 } put any lines as his notion would be, that you
 } give general descriptions to him. But the Courts
normally do not give metes and bounds, that is this is done
afterwards, after they give a general description of an area.

The procedure was followed recently in Portsmouth
against Chesapeake in which annexation the court described
the territory that they wanted to grant to Portsmouth. Then
we directed that a metes and bounds survey be prepared and
our firm prepared that survey for the City of Portsmouth
and we followed the definitions that I have told the Court
here. We went courses and distances and we marked monu-
ments along the line so people can find it.

By Mr. Mays:

Q. In that connection is it your understanding—I am not
asking you what the law is—but is it your understanding of
the law that an annexation ordinance is a notification or-
dinance to people?

Mr. Fitzgerald: If it please the Court I object to what
this witness' understanding of the law is, argument.

Judge Whitley: Sustain the objection.

page 38 } Mr. Mays: Exception.

By Mr. Mays:

Q. You mentioned in the Portsmouth case that you were
called on after the case was determined to run what you
call a metes and bounds line to determine the boundary; is
that correct?

A. Yes, sir.

Q. And was that boundary line that you finally ran, did
it have the same description as that in the ordinance itself?

A. No, sir.

Q. You were testifying in that case, were you not?

A. Yes, sir.

Q. Did you testify at any time that the ordinance as in-
troduced was not valid because it did not have metes and
bounds?

Mr. Fitzgerald: I object to that question, what was done
in that case is immaterial in this case. Whether he objected
or we objected to it.

Mr. Mays: Now we are down to the nub. May I address
myself?

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Judge Purcell: Yes, sir.

Mr. Mays: I am going to show you exactly what page 39 } the ordinances were that were introduced in certain cases in which this witness himself participated. I am going to show the position taken by him in those cases and by the same counsel on the opposite side in this case, in this whole question of metes and bounds. I am prepared to do that now.

And I want to find out from this witness something about these other cases because I have the ordinances that were introduced in order to show what his testimony is. And I mean to pursue that.

I have two Richmond annexation cases, 1961, not Chesterfield, he was not in it. I am going to take the Petersburg case and I mean to take the Portsmouth case and I mean to take the Franklin case. He was in all of them. And I mean to put into evidence, if your Honors will permit me, certified copies of those ordinances from which we are arguing our motion.

And I think they are all very relevant as to the inconsistency of this witness in this case.

Judge Whitley: Was he for the City or the County in those cases?

Mr. Mays: He was for the County.

Judge Whitley: This is the first time he brought the point up?

Mr. Mays: This is the first time he has testified page 40 } to that effect that I can recall. And I know counsel's position on the other side is each ordinance is different. Well, of course each municipality is different, you don't have an identity of description. They all vary.

But I want to point out the character of an annexation ordinance, and the attitude of this witness to the ordinance. And I will argue that an annexation ordinance does not require an exact description. It is a notification ordinance to tell the public where a line is to run. It isn't an ultimate survey after the Court's decision is reached.

We tell the people where the line is going to run and we may describe a country road but the people know a country road. If we give metes and bounds they wouldn't know the metes and bounds. We could run a line from a point to another point and people in the county would be hopelessly lost. But if you tell them what roads are involved and rivers involved they have some idea what you are talking about.

And when you gentlemen finally decide the case and then

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you fix the lines and you tell the surveyor exactly how that line is to run. But the ordinance itself is notice to the world of what the city is up to, what the city is trying page 41 } to do. And it is by that kind of description that they would know what is going on.

And I want to follow up on that with this witness and show, put into evidence the different types of ordinance and the kind of description he is talking about is not in there.

Mr. Fitzgerald: If this witness has testified to the contrary in some other cases he is entitled to bring that out. But if this witness did not take this position in any others it is not the point. If counsel at this table did not raise this question in any other case it is not the point here. This is the County of Nansemond maintaining this position and it is not bound by what any other county has done or this consultant or any other consultant. And unless the witness has testified to the contrary in some other case then what position was taken by some other county in some other case is not material to this issue.

Mr. Garrett: Your Honor, may I say one word? Mr. Mays is making a suggestion that you should disregard, but the legislature requires, namely metes and bounds and gives them merely for description, because people better understand this. That might be an appealing argument to a legislature but not argument to the Court. There is manda- page 42 } tory language. This is a straight forward legal question as to whether the city has complied with the mandatory section of the Code that says you shall do it this way.

It isn't legal for us to come in and say it should have been done some other way. This point is raised squarely. And if he has not complied with it it isn't fatal to the suit. All he has to do is start over. The Statute says he can come back and do it right. But he says the thing to do is come here and generally describe a lot of land. We know the Court is not going to give it to us so we are not going to measure it correctly. You can always correct that. You can go out and survey it.

I say that doesn't meet the test of this Statute. The only question is, is it a metes and bounds description, whether it is acceptable or whether the other is better or whether it is a practicable matter is not the issue at all.

In the Chesapeake case this question was not raised in Chesapeake. We had enough others to keep us busy for quite a long time.

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The question went to the very right that went to that suit under the statute existing, which was decided in our favor.

And the Court of Appeals later reversed.

page 43 } This statute says metes and bounds and that is all we are talking about and not some other situation. On this, as to whether it is acceptable is not the point. Is it a metes and bounds description and if it is not we submit this case falls until they can correct it or file a suit as they should do it.

Mr. Mays: No one could agree with him more that this is not a metes and bounds description. And that is the reason I want to produce to this Court a series of ordinances which have been passed by various cities and stood up in annexation cases and which the Supreme Court has passed. As he says, yes, this is a metes and bounds description. Now I am not concerned with what this witness thinks about metes and bounds but I am concerned to get before this Court the ordinances which the Supreme Court of this great state has had presented and says this is metes and bounds.

Mr. Fitzgerald: I want to call on counsel to call out the people, because this state says yes, this is a metes and bounds description.

Mr. Mays: All right, I will meet that challenge.

Judge Purcell: I think we better discuss this.

Judge Whitley: Yes, sir, we will recess for a page 44 } few minutes, gentlemen.

(Whereupon, a short recess was taken.)

Judge Whitley: The court is of the opinion that it is proper for the City counsel to inquire as to prior inconsistent testimony on the part of the definition of the metes and bounds. But the question that the counsel is going into now, generally the other statutes or ordinances are legal matters for the determination of the Court and will be matters for argument. So to that extent the objection is sustained.

Mr. Mays: Note an exception.

By Mr. Mays:

Q. When you took the map and the description in the ordinance and looked at the proposed line, will you be able to ascertain the roads to which it referred? Could you find them?

A. Yes, sir.

Q. You knew where they were?

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A. I found them.

Q. Yes, sir. You didn't know the center line but you could locate the roads themselves?

A. Yes, sir.

Mr. Mays: That is all.

page 45 } Mr. Fitzgerald: Step down.

(Witness excused.)

Mr. Fitzgerald: If it please the Court, that is all the evidence we have. It may make for a more orderly hearing if the City has evidence they want to put on and we will argue after all the evidence is on.

E. STUART BALL, called as a witness on behalf of the City of Suffolk, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Mays:

Q. Please state your full name, Mr. Ball.

A. E. Stuart Ball.

Q. Where do you live?

A. 3720 Shoreline Drive, Portsmouth, Virginia.

Q. What is your business or profession?

A. Certified land surveyor.

Q. Have you been certified as such by the State of Virginia?

A. Yes, sir.

page 46 } Q. How long have you practiced at your profession?

A. Since 1953.

Q. Can you give the Court a brief statement of your qualifications and former experience?

A. I attended VPI for two years to take advantage of all the surveying offered in the Civil Engineering in the second year, at the time I left and went with the highway department for approximately five years working in surveys, land and design. Later I went with the Seaboard Railroad for four years as a draftsman in their land evaluation department. After that I worked with the Norfolk and Portsmouth Belt Line Railroad for five years as assistant engineer doing design, construction, maintenance and property surveys. And

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that brings me up to '53. And since 1953 I have been in private practice.

Q. You have heard the testimony of Mr. Chewning, have you not?

A. Yes, sir.

Q. And you heard him give a number of definitions as to what the words metes and bounds mean?

A. Yes, sir.

Q. Are there several others that the textbooks give?

A. Yes, sir, there are other definitions. And Mr. page 47 } Chewning referred primarily to engineering textbooks. There are very few textbooks on land surveying. We try to base our opinions on previous cases decided by the Court and also by textbooks, both legal and textbooks written by prominent professors, college professors or people prominent in the engineering profession.

Q. Do you have some of those definitions there?

A. Yes, sir. One of them that comes from Words and Phrases, which I am sure most attorneys are familiar with, and the Court states that "Metes and Bounds means the boundary line or limit of a tract, which boundary may be pointed out and ascertained by rivers or objects, either natural or artificial, which are permanent in character and erection, and so situated with reference to the tract to be described that they may be conveniently used for the purpose of indicating its extent. The metes and bounds of a tract area as definitely fixed by locating its center line and naming the width of the tract as if the lines of its true boundary have been given by acres and distances, and the description thus given would in such a case prevail over a description given by acres and distances."

This refers to a case of the *People against Guthrie* in Illinois.

We have another description that comes from a textbook on real estate law by Kratovil which says on this "Metes are measures of length, such as inches, feet, yards and rods.

Bounds are boundaries both natural and artificial, page 48 } such as streams or streets. In a metes and bounds description the surveyor takes you by the hand, as it were, and leads you over the land. He starts at a well-marked point of beginning and follows the boundaries of the land until he returns once more to the starting point. Landmarks called monuments often mark the several corners of the tract. A monument may be a natural monument, such as a

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tree or river. Or it may be an artificial monument, such as a fence, stake, wall, road or railroad."

The other man that we put quite a bit of faith in is Curtis Brown, an author and college professor, also a past president of the American Congress on surveying and mapping, recognized as an authority in the surveying profession.

And he refers to metes and bounds quite frequently in his works. One of them being what Mr. Chewning was referring to as a metes and bounds description he calls a true metes and bounds description. In other words metes and bounds would be any way of describing a tract of land so that a person would know the extent of what was intended to be described. A true metes and bounds description would be a tract of land bound by courses, bearings or bearings and distances. And Mr. Brown has this to say:

"The term metes and bounds description has a general but not a specific meaning. The word 'metes' means to measure or to assign by measure. The word 'bounds' means the boundary of the land. These words are similar
page 49 } and properly represent the same thought expressed twice. As used in deeds the word 'bounds' is sometimes used in a restricted sense when referring to a monument as a 'stone bound'.

"As commonly used by surveyors the words 'metes and bounds' description means complete perimeter descriptions wherein each course is described in sequence. And the entire description has a direction of travel around the area described. The distinguishing feature of this type of description, line called 'true metes and bounds description', is that each course identified must be described one after the other in the same direction of travel that would occur if a person walked around the entire perimeter. Either of two directions can be used, clockwise or counterclockwise, but once a direction is selected it must be consistent for the remainder of the description. Technically all written descriptions can be metes and bounds description, even though calling for a lot and block by referral. But surveyors and the public do not by common usage classify lot and block description as metes and bounds descriptions.

"Rare indeed is a metes and bounds description written without a 'reference', called a description reading 'Beginning at the southwest corner of Section 10;' and so forth, has a reference call for the township plat and the field notes."

And this, I might interject, he is referring to the grid system as established by the Federal Government

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page 50 } and does not apply to Virginia which is one of the ordinance of the "metes and bounds descriptions often states 'along the easterly property line of ***' and 'this is a bounds call and includes any plat called for by the adjoiner deed according to the map of 'Hillside Acres.'" It is a reference call for a plat and survey.

"Within a metes and bounds description, taking the term in its broader sense, lines defining the *limites* of the area can be classified as being described, (1) by measurements, and (2) by monuments or bounds. A line described by measurement must have a starting point, a distance and direction. The word 'monument' is used here in its broadest meaning."

He states in another section, here again he is referring—

Q. What page?

A. Four thirty-three.

He is referring to a true metes and bounds description. "The infinite variations in an approach to writing a metes and bounds descriptions can be illustrated in Figure 15-54, which is shown here. And in describing a certain parcel as 'Parcel A' by a perimeter description at least 12 points of beginning can be used. A good scrivener would soon eliminate all but two."

page 51 } "As of the time the description is being prepared the location of the intersection of Frog Creek with either the road or the railroad would be relatively certain; but because of an erosion or accretion, it would be highly undesirable to cause a land description to be dependent on a changing point, however an exact quantitative perimeter description of this property cannot be written without a survey locating the railroad, the creek and all of Lot 10." And so naturally the description to Jones is defective. It lists the description here and goes on how to bring this thing about.

Mr. Brown says in this book and other books that he has written that metes and bounds is a description written, the outside limits of a piece of property as described and the majority of deeds of record in the State of Virginia, most of them begin at a point of intersection of two fences or two physical features and follow that fence to another physical point. Very few of the recorded deeds, the older deeds in the original colony or in the original land grants had anything other than that type of description.

Q. Have you made an examination of the description in the ordinance under which this suit is brought?

A. Yes, sir.

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Q. Have you checked the ordinance with the map?

A. Yes, sir.

Q. Which was filed with it. Are you a licensed and experienced surveyor able to take the description in the page 52 } ordinance, the map and whatever reference there may be to County land records, are you then able to run this line to the ground?

A. Yes, sir. There was some question in previous testimony about establishing the center lines of the secondary roads. By the Byrd Acts of 1932 all secondary roads were given the right-of-way of 30 feet and the practice of the Highway Department is to accept the center, to maintain the strip as the center line of the highway. And this has been done a number of times in the past.

Mr. Mays: Your witness.

CROSS-EXAMINATION

By Mr. Fitzgerald:

Q. You maintain an office of private practice?

A. Yes, sir.

Q. Do you do work for lawyers who ask you to prepare descriptions for various purposes of property?

A. Yes, sir.

Q. Are you telling this Court that if I call you up and tell you I have a tract of land over here on State Route 614 that I am buying and I want the metes and bounds of that area, want you to prepare the metes and bounds of that tract of land, that you would give me a description like page 53 } contained in this ordinance?

A. No, sir, I would assume you wanted the bearings and courses and I would assume you wanted the true metes and bounds description and follow that assumption.

Q. You would assume from my saying metes and bounds I mean true metes and bounds, not false metes and bounds; is that right?

A. I don't know what you mean.

Q. You say, one, it is true. What is the other one?

Mr. Mays: Objection.

Judge Whitley: I think the witness is taking care of himself.

By Mr. Fitzgerald:

Q. I didn't coin the phrase true metes and bounds.

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A. Neither did I. Would you mind repeating that?

Q. You would assume that I meant true metes and bounds?

A. Yes, sir.

Q. And yet your use of true metes and bounds, what I gain from what you read—who wrote that book?

A. Curtis Brown.

Q. What he describes in this book as true metes page 54 } and bounds, the description in the ordinance doesn't comply with that?

A. No, sir, it does not. The description in the ordinance is a metes and bounds description in the sense of previous testimony.

Q. It doesn't comply with what this author calls true metes and bounds?

A. No, sir. He also defines metes and bounds and true metes and bounds.

Q. Now if you just answer my question, sir: You referred in reading from all of the authorities you read from that a bound could be a natural or artificial boundary?

A. Yes, sir.

Q. Didn't say anything about an imaginary boundary, though, did it?

A. No, sir, I don't remember anything about an imaginary boundary.

Q. Could you take this Court out along any of the state roads referred to in the description and coined in the ordinance, could you take this Court out there and walk out and show them where a point 400 feet from the center line of any one of these state routes would be?

A. I could do that a whole lot easier than the center line of the Elizabeth River used in the Portsmouth page 55 } case.

Mr. Fitzgerald: I will ask the Court to ask the witness to stick to the questions.

By Mr. Fitzgerald:

Q. Can you take this Court out and show them where a point is 400 feet from the center line of the highway would be?

A. Yes, sir.

Q. Without instruments?

A. Just with a tape.

Q. And you can go out and find a center line of any one of these roads?

A. Yes, sir.

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Q. Can you tell me how you know?

A. Very simple matter to check with the Highway Department.

Q. And find out?

A. Yes, sir.

Q. Do they have plats of all these highways?

A. Any additional right-of-ways they have acquired since 1932 they have in their files.

Q. So you would have to go to the Highway before you took the Court out there?

A. It would depend on whether I was familiar with that particular road or not.

page 56 } Q. You would either have to be familiar with the road or go to the Highway Department; is that right?

A. That is true.

Q. Could you tell the Court where a point is 1195 feet from one of these highways, could you walk out there and show them where that was?

A. Yes, sir, I think I could step that off.

Q. You think you could step that off?

A. Yes, sir, been doing it 30 years.

Q. Is that the way you prepare your metes and bounds surveys?

A. No, sir, we use the most modern equipment we can obtain.

Q. You referred to a figure or chart in the book you were reading from as an example of a true metes and bounds description. That gives the courses and distances, doesn't it?

A. As the true metes and bounds description, yes.

Q. The figure in that book gives the courses and distances?

A. Yes, sir, what I refer to as true metes and bounds description.

Q. And I believe that book said that using a center line of the stream and a right-of-way of a road or
page 57 } center line of the road wasn't a good bound because both of them could move, couldn't they?

A. I don't believe it said that, but it could move.

Q. Didn't I hear you say a stream could erode?

A. No, sir, I didn't use the word erode.

Q. If I heard you say that I am wrong?

A. I think you are. I will find out in just a minute—I apologize to you, I did read that.

Q. You did read that? The book says using center lines of streams or intersections, the lines of roads or railroads are not a proper bound?

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A. No, it says it is not desirable to use them in a true metes and bounds description.

Q. Yes, sir, because they move around? It says erode?

A. They have that tendency, sure.

Q. Did you find any such points of reference mentioned in the description in this ordinance?

A. The points mentioned in the reference in the description of the ordinance are very clear to me, where they were to be, and the bounds of the property to be. No problem in my mind of surveying and no problem of establishing any right-of-way.

Q. The question is, sir, did you find that type of page 58 } point used in this description? Can you answer that question yes or no?

A. What type of point?

Q. The center line of a road or center line of a stream?

A. Yes, sir, they were there.

Q. All right, that is the answer. You are familiar with this local boundary line as described then in this ordinance?

A. Yes, sir.

Q. Isn't one of the streams used as a center of the stream actually used as a reservoir?

A. It is still a stream.

Q. Hasn't it been dammed up?

A. Well, as long as it is referring to the center of it we can very easily find it, whether it is dammed or 500 feet wide.

Q. Could you answer the question, sir? Hasn't it been dammed up, the stream?

A. I am not certain whether it has or not. I haven't been to the end of it.

Q. Well, you are familiar, I thought you said, with the whole boundary. Isn't one of these streams that has been used a reservoir, the area has been flooded as a reservoir, isn't that true?

A. Yes.

page 59 } Q. Can you tell the Court approximately for what distance that stream is used as a part of this boundary?

A. No, sir, I can't.

Q. You don't know whether it is 500 feet or 5,000 feet?

A. Neither can I tell you the distance down the highway from one intersection to the other intersection without a proper measurement. But it is physically there, a physical monument. But there is no question in my mind if you go from the intersection of this road to that intersection.

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Q. We are talking now about metes and bounds. Now can you tell us whether or not you can go out there and in that flooded reservoir and point out to the Court the center line of that stream that used to be there?

A. I can do that just as well as the center line of any other stream along this area.

Judge Purcell: What stream are we speaking of, what is the name of the stream? Does the witness know what the name of this stream is?

Mr. Fitzgerald: The stream, I believe, is Speight's Run.

Judge Purcell: All right, sir.

By Mr. Fitzgerald:

Q. Can you tell the Court whether or not you can take the description, whatever you may call it, that is in page 60 } this ordinance and plat it out on a piece of paper?

A. No, sir. And I would also like to tell the Court—

Q. Just answer my question, can you plat it out on a piece of paper?

A. No, sir.

Q. Can you take the description in this ordinance and compute the size of the area?

A. Yes, sir.

Q. Without plotting it out?

A. You can obtain the area from aerial photographs.

Q. No, sir—

A. This is how the thing is arrived at. It was taken from aeriels.

Judge Whitley: Just answer the question.

The Witness: Yes, sir, it can be obtained.

By Mr. Fitzgerald:

Q. All right, will you answer this question: Can you take the description as obtained in this ordinance and compute the size of the area?

A. Mathematically no. But the area involved here was obtained by planimeter, which is used quite frequently to determine accurately the boundary. The maps would
page 61 } have had available to us all the latest aerial surveys which are used not only in Nansemond County, Suffolk, Virginia Beach and the entire State of Vir-

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ginia. And insofar as determining the area within a reasonable, say within two to three per cent, this can be done.

Q. Just one more question, sir: Did you prepare this description?

A. No, sir, I did not.

Mr. Fitzgerald: All right.

REDIRECT EXAMINATION

By Mr. Mays:

Q. I understood you to say that the distinction here is between metes and bounds and true metes and bounds; is that correct?

A. Yes, sir.

Q. And the true metes and bounds are those that call for the things that Mr. Chewning mentioned?

A. Yes, sir.

Q. And the metes and bounds are those set forth in the statute? The metes and bounds are words used in the statute, are not true metes and bounds?

Mr. Fitzgerald: That is asking the witness to form a conclusion.

page 62 } By Mr. Mays:

Q. I ask whether—the question was, just this, whether or not you could take the description from the ordinance and the map attached to it and determine the courses on the ground itself as a surveyor?

A. Yes, sir.

Mr. Mays: All right.

RECROSS EXAMINATION

By Mr. Fitzgerald:

Q. In other words, you can take the map and what you have here and make a metes and bounds description?

A. Make a survey of it. You have to make a survey first. I am not a magician.

* * * * *

page 136 } Judge Whitley: If you gentlemen have finished,

we have previously finished all the testimony in the matter, the Court will recess and consider the motions before it.

(Whereupon, the Court recessed to consider the motions before it.)

(And after some time the Court returned to the Courtroom with the following decision, to-wit:

Judge Whitley: Judge Purcell will give the decision for the majority.

Judge Purcell: Gentlemen, we have taken considerable time on this motion, we have discussed it among ourselves. The Court is split in its decision in reference to this. The argument of counsel has been full and complete.

And we have reached, the majority of the Court, has reached the conclusion that the motion must be sustained. Section 15.1-1033 specifically sets forth that an annexation ordinance must include a metes and bounds and size of area sought.

Now, all sides agree that this is a jurisdictional question and unless the ordinance does state that the Court does not have jurisdiction to proceed. We feel that the Legislature by metes and bounds description, gave the meaning page 137 } to metes and bounds of common usage, common meaning. That is, in effect, meant a description by courses and distances. And we feel that we are bound by the Statute passed by the General Assembly in that regard.

Metes and bounds in its ordinary usage, and the terms in their normal and ordinary meaning, means a description by courses and distances.

We also find in the ordinance, itself, description as more or less describing distances. We don't feel that this is in any way definite and we find that the evidence in this case, both witnesses who have testified have stated that they could not take the description in the ordinance and plat it and come up with a plat. And we feel that the public is entitled to know where these lines are.

Now, the counsel for the city has cited a number of cases and we have looked at those cases. We have reviewed those cases. There is some dicta to the effect that a description such as is in this ordinance might be sufficient, but we feel that that is dicta only and that the Supreme Court hasn't said that a description such as is found in this ordinance

is adequate. We don't feel we are in any way bound by the dicta in that indication.

And we feel that, in summary, that this is just page 138 } not a metes and bounds description, that in any way we can call it a metes and bounds description and we sustain the motion.

I have taken some length of time to explain to counsel, and I think you are entitled to know. And the Supreme Court is entitled to know our feeling in this regard, and we wanted it to be a matter of record.

Now, if Judge Coleman wants to add anything to what I have said he is at liberty; I would certainly want him to add anything he wishes to my statement in reference to this matter.

Judge Coleman: I think Judge Purcell has adequately stated the position of the majority of the Court and I concur in his statement of the reasons for the decision.

Judge Whitley: I would overrule the motion. In my opinion the description is sufficiently definite, can be followed on the ground. The general public would know the lines and a surveyor—the general public would know more about it than if they looked at a plat of it. I think it substantially complies with the statutory requirements. And as I said, I would overrule the motion.

That seems to conclude it for today.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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